12 cv 7929

JUDGE HELLERSTEIN

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JEFFERSON MEIGHAN,

PLAINTIFF.

vs

THE CITY OF NEW YORK, a municipal entity,
NEW YORK CITY POLICE
OFFICERS "John Does 1-3"

DEFENDANTS.

INDEX NO.
ECF CASE

COMPLAINT
[JURY TRIAL
DEMANDED]

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OCT 24 2012
U.S.D.C. S.D. N.Y.
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Plaintiff JEFFERSON MEIGHAN, by his attorneys, STECKLOW COHEN & THOMPSON, complaining of the defendants, respectfully allege as follows:

I. PRELIMINARY STATEMENT

1. Plaintiff JEFFERSON MEIGHAN brings this action for compensatory damages, punitive damages and attorney's fees pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988 for violations of his civil rights, as said rights are secured by said statutes and the Constitutions of the State of New York and the United States.

2. On the evening of March 17th, 2012 Plaintiff JEFFERSON MEIGHAN was present in Zuccotti Park ("the park") as a bystander and observer of Occupy Wall Street's ("OWS") sixth-month anniversary event. That night, even though he was not actively participating in protest activities, Plaintiff JEFFERSON MEIGHAN was seriously injured in what one journalist would later describe as 'the most violent [New York City Police Department ("NYPD")] response that he had seen at an OWS protest."[1] At or around 10:30pm, after observing numerous instances of members of the NYPD using excessive force against other individuals present, Plaintiff JEFFERSON MEIGHAN heard one or more NYPD officers issue an order for all persons to leave the park. Complying with this order and in fear for his safety, Plaintiff JEFFERSON MEIGHAN began making his way out of the park. En route, and while at all times complying with the NYPD officers' order to leave the park, Plaintiff JEFFERSON MEIGHAN stepped onto a marble ledge in order to exit the park as quickly as possible. Soon thereafter, Defendant "John Doe I" POLICE OFFICER, without reason or warning, shoved Plaintiff

[1] Sarah Knuckley et al., "Suppressing Protest: Human Rights Violations in the U.S. Response to Occupy Wall Street" (2012).Occupy Wall Street" 74, Protest and Assembly Rights Project, (2012). Report incorporated by reference herein and available online at: http://www.chrgj.org/projects/suppressingprotest.pdf

OCT 24 ... CITY OF N.Y. LAW DEPT OFFICE OF CORP. COUNSEL

JEFFERSON MEIGHAN off of the ledge, causing Plaintiff JEFFERSON to fall and break his right wrist. Shortly after Plaintiff JEFFERSON MEIGHAN was able to stand back up, Defendant “John Doe II” POLICE OFFICER and Defendant “John Doe III” POLICE OFFICER shoved Plaintiff JEFFERSON MEIGHAN multiple times before allowing him to exit the park. After exiting the park, Plaintiff JEFFERSON MEIGHAN approached an OWS volunteer paramedic who wrapped his injured right wrist. The next week, Plaintiff JEFFERSON MEIGHAN would miss time from work, visit his primary care physician as well as an orthopedic specialist for treatment on his right wrist, and receive a diagnosis that he had fractured a bone in the same. Thereafter, Plaintiff JEFFERSON MEIGHAN received months of on-going treatment for his injury. Plaintiff JEFFERSON MEIGHAN experienced throbbing, as well as relentless pain and discomfort from his injury sustained through the Defendant “John Doe” POLICE OFFICERS’ repeated acts of shoving and manhandling him on the evening of March 17, 2012. In sum, Plaintiff JEFFERSON MEIGHAN brings this claim as a quest for answers as to why the same NYPD officers sworn to serve and protect him instead harassed him, brutalized him, and caused him to suffer a significant and painful injury despite the fact that he was at no point engaged in any illegal or criminal conduct and was at all times compliant with the officers’ orders.

II. JURISDICTION

3. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331, 1343(3) and (4) and the aforementioned statutory and constitutional provisions.

4. Plaintiff JEFFERSON MEIGHAN further invokes this Court's supplemental jurisdiction, pursuant to 28 USC. § 1367, over any and all State law claims and causes of action which derive from the same nucleus of operative facts and are part of the same case or controversy that gives rise to the federally based claims and causes of action.

III. VENUE

5. Venue is proper for the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. § 1391(a), (b), and (c) and § 1402(b) because the claims arose in this district.

IV. JURY DEMAND

6. Plaintiff JEFFERSON MEIGHAN respectfully demands a trial by jury of all issues in this matter pursuant to Fed. R. Civ. P. 38(b).

V. THE PARTIES

7. Plaintiff JEFFERSON MEIGHAN is a resident of the City of Mamaroneck, State of New York, and the County of Westchester.

8. Defendant CITY OF NEW YORK was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

9. Defendant CITY OF NEW YORK maintains the New York City Police Department, a duly authorized public authority and/or police department, authorized to perform all functions of a police department as per the applicable sections of the New York State Criminal Procedure Law, acting under the direction and supervision of the aforementioned municipal corporation, CITY OF NEW YORK.

10. That at all times hereinafter mentioned, the Defendant POLICE OFFICERS "JOHN DOES 1-3" were duly sworn police officers of said department and were acting under the supervision of said department and according to their official duties.

11. The physical identity, *sui generis*, of Defendant "John Doe I" POLICE OFFICER is known to Plaintiff JEFFERSON MEIGHAN at this time.

12. Defendant "John Doe I" POLICE OFFICER presented as Caucasian, appeared to be approximately forty years old, and was wearing a police uniform on the date of the incident in question.

13. Plaintiff JEFFERSON MEIGHAN will amend this complaint to name the Defendant "John Doe" POLICE OFFICERS as their identities can be established to a reasonable certainty.

14. That at all times relevant to this action, the Defendants NEW YORK CITY POLICE OFFICERS "JOHN DOES 1-3" (collectively, "Defendant 'John Doe' POLICE OFFICERS") either personally or through their employees, were acting under color of state law and/or in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices of the State or City of New York.

15. Each and all of the acts of the Defendant "John Doe" POLICE OFFICERS alleged herein were done by said defendants while acting within the scope of their employment by Defendant CITY OF NEW YORK.

16. Each and all of the acts of the Defendant "John Doe" POLICE OFFICERS alleged herein were done by said defendants while acting in furtherance of their employment by Defendant CITY OF NEW YORK.

VI. FACTS COMMON TO ALL CLAIMS

17. On the evening of March 17, 2012, at or around 10:30pm, Plaintiff JEFFERSON MEIGHAN was present in Zuccotti Park ("the park").

18. Plaintiff JEFFERSON MEIGHAN was in the park in order to observe a gathering the six-month anniversary of Occupy Wall Street ("OWS").

19. OWS began on September 17^{th}, 2011 and is a collection of individuals and ideas that, *inter alia*, seek to call attention to and change inequalities and ill effects created through government-driven and corporation-favoring policies and practices that prevent a vast majority of individuals from enjoying the rights, liberties, and freedoms guaranteed to them by the United States Constitution.

20. Plaintiff JEFFERSON MEIGHAN was in the park for approximately one hour before the events giving rise to the incident in question took place.

21. Throughout that hour, Plaintiff JEFFERSON MEIGHAN walked around the park and spoke with a few people.

22. Over this same period of time, Plaintiff JEFFERSON MEIGHAN observed multiple instances of police officers pushing, grabbing, shoving and otherwise manhandling OWS participants without apparent cause or justification.

23. At or around 11:00pm, Plaintiff JEFFERSON MEIGHAN —— owing to observing multiple instances of unjustified force used against civilians by the Defendant "John Doe" POLICE OFFICERS and other police officers then present —— feared for his safety.

24. At or around this time, members of NYPD who were present issued an order to disperse to all civilians who were in the park.

25. At or around this time, Plaintiff JEFFERSON MEIGHAN —— in order to comply with the police officers' order to disperse and in reasonable fear for his safety —— began making his way out of the park.

26. Based on where Plaintiff JEFFERSON MEIGHAN was standing at the time, he walked toward the direction of the fastest way to exit the park.

27. As Plaintiff JEFFERSON MEIGHAN was leaving he observed that, due to pedestrian congestion caused in no small part by a large police presence, he had to step onto and over a marble ledge of about two to three feet ("the ledge") in order to exit the park.

28. Plaintiff JEFFERSON MEIGHAN stepped onto the ledge.

29. At no point before Plaintiff JEFFERSON MEIGHAN stepped onto the ledge did any of the Defendant "John Doe" POLICE OFFICERS or any other police officers present order, instruct, or command civilians generally or Plaintiff JEFFERSON MEIGHAN specifically to not step onto the ledge.

30. At no point before Plaintiff JEFFERSON MEIGHAN stepped onto the ledge did it appear to either civilians generally or to Plaintiff JEFFERSON MEIGHAN specifically that the ledge was a boundary, a border, or any other type of crowd-control mechanism in which individuals were not permitted to step onto and over.

31. At or around this time, Defendant "John Doe I" POLICE OFFICER was present on the same ledge.

32. Almost immediately after Plaintiff JEFFERSON MEIGHAN stepped onto the ledge Defendant "John Doe I" POLICE OFFICER shoved Plaintiff.

33. Defendant “John Doe I” POLICE OFFICER shoved Plaintiff JEFFERSON MEIGHAN when he, Plaintiff JEFFERSON MEIGHAN, was facing away from Defendant “John Doe I” POLICE OFFICER.

34. At no point before, during, or after Defendant “John Doe I” POLICE OFFICER’s shove of Plaintiff JEFFERSON MEIGHAN had Plaintiff JEFFERSON MEIGHAN lunged toward, swung at, or in any other way threatened to use force against Defendant “John Doe I” POLICE OFFICER, the other Defendant “John Doe” POLICE OFFICERS, or any of the other police officers present.

35. Plaintiff JEFFERSON MEIGHAN had neither raised his voice nor used offensive language toward Defendant “John Doe I” POLICE OFFICER, the other Defendant “John Doe” POLICE OFFICERS, or any of the other police officers present.

36. Defendant “John Doe I” POLICE OFFICER did not say anything to Plaintiff JEFFERSON MEIGHAN before shoving him.

37. Upon information and belief, Defendant “John Doe I” POLICE OFFICER’s shove of Plaintiff JEFFERSON MEIGHAN was purposeful and at all times made with intent.

38. Defendant “John Doe I” POLICE OFFICER’s shove of Plaintiff JEFFERSON MEIGHAN was undertaken with reckless indifference to the increased possibility of injury inherent in falling from an elevation of any height from the ground.

39. Defendant “John Doe I” POLICE OFFICER’s shove of Plaintiff JEFFERSON MEIGHAN was undertaken with deliberate indifference to the increased possibility of injury inherent in falling from an elevation of any height from the ground.

40. Defendant “John Doe I” POLICE OFFICER’s shove of Plaintiff JEFFERSON MEIGHAN was caused by the negligent conduct of Defendant “John Doe I” POLICE OFFICER.

41. Defendant “John Doe I” POLICE OFFICER’s shove of Plaintiff JEFFERSON MEIGHAN was caused by the negligent conduct of the nearby Defendant “John Doe” POLICE OFFICERS as well as other police officers present.

42. Defendant “John Doe I” POLICE OFFICER’s act of shoving Plaintiff JEFFERSON MEIGHAN caused him, Plaintiff JEFFERSON MEIGHAN, to fall off of the marble ledge and onto the ground.

43. The ground near the ledge was concrete.

44. As Plaintiff JEFFERSON MEIGHAN began falling toward the ground he attempted to use his hands in order to catch himself.

45. As a result of Defendant “John Doe I” POLICE OFFICERS shove of Plaintiff JEFFERSON MEIGHAN and Plaintiff JEFFERSON MEIGHAN’s act of attempting to use his hands in order catch his fall from the aforementioned three foot ledge, Plaintiff JEFFERSON MEIGHAN landed on his right hand and wrist.

46. Upon information and belief, at the time of Plaintiff JEFFERSON MEIGHAN's impact with the concrete, his right hand and wrist absorbed the majority, if not all, of his body weight.

47. Plaintiff JEFFERSON MEIGHAN weighed approximately 176 lbs on the date of the incident in question.

48. Plaintiff JEFFERSON MEIGHAN felt immediate pain in his wrist as a result of Defendant "John Doe I" POLICE OFFICERS shove and Plaintiff's own resulting fall.

49. After Plaintiff JEFFERSON MEIGHAN fell to the ground he re-collected himself, returned to his feet, and continued making his way out of the park.

50. Shortly thereafter, Defendant "John Doe II" POLICE OFFICER and Defendant "John Doe III" POLICE OFFICER —— on information and belief, to convey the message that the NYPD does not allow peaceful assemblies, marches, or demonstrations of any sort —— shoved Plaintiff JEFFERSON MEIGHAN multiple times.

51. Shortly thereafter, Defendant "John Doe II" POLICE OFFICER and Defendant "John Doe III" POLICE OFFICER —— on information and belief, to further establish the tone and convey the message that the NYPD has a content-based animus toward, disfavor of, and all-together distaste for all OWS assemblies and events —— shoved Plaintiff JEFFERSON MEIGHAN multiple times.

52. Further information relating to the Defendant CITY OF NEW YORK's and the NYPD's ongoing pattern, custom, practice or policy of condoning and encouraging constitutionally violative conduct by police officers towards OWS participants and observers can be found in the appendix attached hereto, "ADDITIONAL FACT PLEADINGS IN SUPPORT OF MONELL CLAIMS," which is herein incorporated by reference.

53. At no point before, during, or after the Defendant "John Doe" POLICE OFFICERS multiple acts of shoving Plaintiff JEFFERSON MEIGHAN did any of the individual Defendant "John Doe" POLICE OFFICERS attempt to stop, prevent, or otherwise obstruct their colleagues from doing the same.

54. Immediately after Plaintiff JEFFERSON MEIGHAN left the park, owing to the pain he was experience in his right wrist, Plaintiff approached an OWS Medical Team member ("Paramedic").

55. At all times relevant, Paramedic served as a volunteer member for a team of first-aid trained individuals, union nurses, and other persons with medical training who had been providing first aid to individuals at and around OWS events.

56. Upon information and belief, OWS' Medical Team was initially formed to provide first-aid to individuals who were injured by members of the NYPD, i.e., eye

washes for pepper spray, ice packs for bruises, but had thereafter gone on to provide other first aid services to the public and OWS participants on a charitable basis.[2]

57. At or around this time, Paramedic examined Plaintiff JEFFERSON MEIGHAN's right wrist.

58. At or around this time, Paramedic wrapped Plaintiff JEFFERSON MEIGHAN's right wrist in an Ace Bandage or other like wrap.

59. Paramedic's treatment of Plaintiff JEFFERSON MEIGHAN neither cured nor exacerbated Plaintiff's ongoing pain and discomfort.

60. Shortly thereafter, Plaintiff JEFFERSON MEIGHAN made his way to Grand Central Station in order to catch a Metro-North Railroad train that would take him home.

61. On or around March 19th, 2012, the Monday morning following the incident in question, Plaintiff JEFFERSON MEIGHAN, still experiencing significant pain in his right wrist, went to work.

62. As a result of the pain in his right wrist, Plaintiff JEFFERSON MEIGHAN, while at work, scheduled a doctor's appointment with his primary care physician ("Plaintiff's Doctor") for the same afternoon.

63. After generally evaluating and specifically gauging the amount of pain Plaintiff JEFFERSON MEIGHAN was experiencing in his right wrist, Plaintiff's Doctor referred Plaintiff JEFFERSON MEIGHAN to see an orthopedic hand specialist ("Orthopedic Specialist").

64. Relying on Plaintiff's Doctor's recommendation and still experiencing significant pain in his right wrist, Plaintiff JEFFERSON MEIGHAN met with Orthopedic Specialist on or around March 23rd, 2012, the Friday of the same week.

65. Orthopedic Specialist took x-rays of Plaintiff JEFFERSON MEIGHAN's right wrist.

66. Orthopedic Specialist determined that Plaintiff JEFFERSON MEIGHAN had fractured a bone in his right wrist.

67. Plaintiff JEFFERSON MEIGHAN had not engaged in any conduct between being shoved by the Defendant "John Doe" POLICE OFFICERS and his meeting with Orthopedic Specialist that could in any way have resulted in the fracturing of a bone in his right wrist.

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[2] Shapiro, Julie, "Occupy Wall Street's Medical Volunteers Fill Health Care Gaps" DNAinfo, October 22, 2011. Article incorporated by reference herein and available online at http://www.dnainfo.com/new-york/20111022/downtown/occupy-wall-streets-medical-volunteers-fill-healthcare-gaps

68. After Orthopedic Specialist determined that Plaintiff JEFFERSON MEIGHAN had fractured a bone in his right wrist, Orthopedic Specialist, or one of his colleagues, employees, or agents, put a hard cast around Plaintiff JEFFERSON MEIGHAN's right wrist.

69. Plaintiff JEFFERSON MEIGHAN would thereafter wear the hard cast around his right wrist for five weeks.

70. Approximately five weeks after the Defendant "John Doe" POLICE OFFICERS' multiple acts of shoving Plaintiff JEFFERSON MEIGHAN, Plaintiff JEFFERSON MEIGHAN visited Orthopedic Specialist again and had the hard cast removed from his right wrist.

71. Thereafter, at the same appointment, Orthopedic Specialist gave Plaintiff JEFFERSON MEIGHAN a splint to wear around his right wrist.

72. Orthopedic Specialist advised that Plaintiff JEFFERSON MEIGHAN wear the aforementioned splint around his right wrist for approximately three weeks.

73. Orthopedic Specialist advised that Plaintiff JEFFERSON MEIGHAN wear the same splint around his right wrist, in sum and substance, "as often as he could"; to wit, Orthopedic Specialist advised Plaintiff JEFFERSON MEIGHAN to only remove the splint in order to bathe.

74. Orthopedic Specialist advised that Plaintiff JEFFERSON MEIGHAN schedule physical therapy for his right wrist.

75. Plaintiff JEFFERSON MEIGHAN complied with Orthopedic Specialist's directions in every particular.

76. Orthopedic Specialist advised Plaintiff JEFFERSON MEIGHAN that it was highly likely that he would have arthritis in his right wrist in the future as a result of the injury sustained in the incident described above.

77. Orthopedic Specialist advised Plaintiff JEFFERSON MEIGHAN that it was highly likely that he would have arthritis in his right wrist in the future

78. Orthopedic Specialist advised Plaintiff JEFFERSON MEIGHAN that there was nothing that could be done to alleviate the resulting pain.

79. As a result of the Defendant "John Doe" POLICE OFFICERS' multiple acts of shoving Plaintiff JEFFERSON MEIGHAN, Plaintiff JEFFERSON MEIGHAN sustained a significant, painful and permanent injury to his right wrist.

80. In the weeks and months following Plaintiff JEFFERSON MEIGHAN's injury, Plaintiff JEFFERSON MEIGHAN was unable to perform tasks that he had previously been able to perform with ease, including though not limited to: lifting any and all objects, writing, driving, using a mouse, typing, opening doors, doing the dishes, and answering phone calls.

81. In the weeks and months following Plaintiff JEFFERSON MEIGHAN's injury, Plaintiff JEFFERSON MEIGHAN experienced difficulty performing tasks that he had previously been able to perform with ease, including though not limited to: lifting any and all objects, writing, driving, using a mouse, typing, opening doors, doing the dishes, and answering phone calls.

82. As a result of the foregoing, Plaintiff JEFFERSON MEIGHAN sustained, *inter alia,* mental injuries, emotional distress, embarrassment, humiliation, and deprivation of his constitutional rights.

83. As a result of the Defendants' constitutionally violative conduct, Plaintiff JEFFERSON MEIGHAN demands a judgment from Defendants in a sum of money to be determined at trial.

FIRST CLAIM FOR RELIEF
DEPRIVATION OF FEDERAL CIVIL RIGHTS UNDER 42 U.S.C. § 1983

84. Plaintiff JEFFERSON MEIGHAN repeats, reiterates and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

85. All of the aforementioned acts of the Defendant CITY OF NEW YORK and Defendant "John Doe" POLICE OFFICERS ("Defendants", unless otherwise described, henceforth), their agents, servants and employees, were carried out under the color of state law.

86. All of the aforementioned acts deprived Plaintiff JEFFERSON MEIGHAN of the rights, privileges and immunities guaranteed to citizens of the United States by the First, and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. § 1983.

87. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, with all of the actual and/or apparent authority attendant thereto.

88. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, pursuant to the customs, usages, practices, procedures, and the rules of Defendant the CITY OF NEW YORK and the New York City Police Department, all under the supervision of ranking officers of said department.

89. The Defendants, collectively and individually, while acting under color of state law, engaged in Constitutionally-violative conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

90. As a result of the foregoing, Plaintiff JEFFERSON MEIGHAN was put in fear for his safety; harassed, battered, berated, and caused to suffer a significant and painful injury to his right wrist.

91. As a result of the above constitutionally impermissible conduct, Plaintiff was

caused to suffer personal injuries, violation of civil rights, emotional distress, anguish, anxiety, fear, humiliation, loss of freedom, loss of wages, legal expenses and damage to his reputation and standing within his community.

92. As a result of Defendants' impermissible conduct, Plaintiff demands judgment against Defendants in a sum of money to be determined at trial.

SECOND CLAIM FOR RELIEF
FAILURE TO INTERVENE UNDER 42 U.S.C. §1983

93. Plaintiff JEFFERSON MEIGHAN repeats, reiterates and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

94. The Defendant "John Doe" POLICE OFFICERS had an affirmative duty to intervene on Plaintiff JEFFERSON MEIGHAN's behalf to prevent the violation of his constitutional rights.

95. The individual Defendant "John Doe" POLICE OFFICERS failed to intervene on Plaintiff JEFFERSON MEIGHAN's behalf to prevent the violation of his constitutional rights despite having had a realistic opportunity to do so.

96. The individual Defendant "John Doe" POLICE OFFICERS failed to intervene on Plaintiff JEFFERSON MEIGHAN 's behalf to prevent the violation of his constitutional rights despite having substantially contributed to the circumstances within which Plaintiff JEFFERSON MEIGHAN's rights were violated by their affirmative conduct.

97. As a result of the aforementioned conduct of the individual Defendant "John Doe" POLICE OFFICERS, Plaintiff JEFFERSON MEIGHAN's constitutional rights were violated.

98. As a result of the above constitutionally impermissible conduct, Plaintiff JEFFERSON MEIGHAN was caused to suffer personal injuries, violation of his civil rights, emotional distress, anguish, anxiety, fear, humiliation, loss of freedom, loss of wages, legal expenses and damage to his reputation and standing within his community.

99. As a result of Defendants' impermissible conduct, Plaintiff demands judgment against Defendants in a sum of money to be determined at trial.

THIRD CLAIM FOR RELIEF
EXCESSIVE FORCE UNDER 42 U.S.C. § 1983

100. Plaintiff JEFFERSON MEIGHAN repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth hereine.

101. Defendant "John Doe I" POLICE OFFICER used excessive force in shoving Plaintiff JEFFERSON MEIGHAN.

102. Defendant "John Doe I" POLICE OFFICER used excessive force in shoving Plaintiff JEFFERSON MEIGHAN off of the marble ledge.

103. Defendant "John Doe II" POLICE OFFICER and Defendant "John Doe III" POLICE OFFICER used excessive force in shoving Plaintiff JEFFERSON MEIGHAN multiple times.

104. At no point during the above-mentioned actions did the circumstances presented to the Defendant "John Doe" POLICE OFFICERS support any of the above-mentioned applications of force on Plaintiff JEFFERSON MEIGHAN.

105. Plaintiff JEFFERSON MEIGHAN was subjected to excessive force in violation of his rights as guaranteed under the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. Section 1983.

FOURTH CLAIM FOR RELIEF
MUNICIPAL LIABILITY UNDER *MONELL* ARISING FROM UNCONSTITUTIONAL POLICIES AND CUSTOMS UNDER 42 U.S.C. § 1983

106. Plaintiff JEFFERSON MEIGHAN repeats, reiterates and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

107. Defendants harassed, battered, berated and caused Plaintiff JEFFERSON MEIGHAN to suffer a significant and painful injury to his right wrist in the absence of any evidence of criminal wrongdoing, notwithstanding their knowledge that their conduct would jeopardize Plaintiff JEFFERSON MEIGHAN's liberty, well-being, safety and constitutional rights.

108. The acts complained of were carried out by the aforementioned individual Defendant "John Doe" Police Officers in their capacities as police officers and officials, with all the actual and/or apparent authority attendant thereto.

109. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers and officials pursuant to the customs, policies, usages, practices, procedures, and rules of the CITY OF NEW YORK and the NYPD, all under the supervision of ranking officers of said department.

110. As a result of the aforementioned conduct of the Defendant CITY OF NEW YORK and the individual Defendant Police Officers, Plaintiff JEFFERSON MEIGHAN 's constitutional rights were violated.

111. As a result of the above constitutionally impermissible conduct, Plaintiff JEFFERSON MEIGHAN was caused to suffer personal injuries, violation of civil rights, emotional distress, anguish, anxiety, fear, humiliation, loss of freedom, loss of wages, legal expenses and damage to his reputation and standing within his community.

112. As a result of Defendants' impermissible conduct, Plaintiff demands judgment against Defendants in a sum of money to be determined at trial.

FIFTH CLAIM FOR RELIEF
RETALIATION FOR FIRST AMENDMENT PROTECTED EXPRESSION THROUGH USE OF EXCESSIVE FORCE UNDER 42 U.S.C. § 1983

113. Plaintiff JEFFERSON MEIGHAN repeats, reiterates and realleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

114. Further information relating to the Defendant CITY OF NEW YORK's and the NYPD's constitutionally violative practices relating to retaliation for first amendment protected expression can be found in the, "ADDITIONAL FACTS PLEADINGS IN SUPPORT OF MONELL CLAIMS," which is herein incorporated by reference.

115. Plaintiff JEFFERSON MEIGHAN was present in Zuccotti Park at the time of the incident in question in order to observe an OWS event.

116. Upon information and belief, the Defendant "John Doe" POLICE OFFICERS shoved and caused Plaintiff JEFFERSON MEIGHAN to injure his right wrist in order to retaliate against Plaintiff JEFFERSON MEIGHAN for being present in Zuccotti Park during an OWS event.

117. The Defendant "John Doe" POLICE OFFICERS utilized excessive force against Plaintiff JEFFERSON MEIGHAN in order to retaliate against him for being present in Zuccotti Park and lawfully exercising his First Amendment protected rights to free speech, expression, and association.

118. Plaintiff JEFFERSON MEIGHAN was not engaged in an any illegal or criminal activity of any kind or sort when the Defendant "John Doe" POLICE OFFICERS shoved and caused him to injure his right wrist.

119. The actions of the Defendant "John Doe" POLICE OFFICERS heretofore described, were designed to and did cause bodily harm, pain and suffering in direct retaliation for Plaintiff JEFFERSON MEIGHAN's exercise of his civil and constitutional rights of free speech, free expression and expressive association as guaranteed by First and Fourteenth Amendments to the United States Constitution as well as the Constitution of the State of New York.

120. Defendants' actions were undertaken under color of law and would not have existed but for Defendants using their official power.

121. Defendants, collectively and individually, while acting under color of state law, were directly and actively involved in violating the constitutional rights of Plaintiff JEFFERSON MEIGHAN.

122. As a result of the foregoing, Plaintiff JEFFERSON MEIGHAN is entitled to compensatory damages and punitive damages against the Defendants in amounts to be determined at trial.

123. As a result of the above constitutionally impermissible conduct, Plaintiff JEFFERSON MEIGHAN was caused to suffer personal injuries, violation of his civil rights, emotional distress, anguish, anxiety, fear, humiliation, loss of freedom, loss of wages, legal expenses and damage to his reputation and standing within his community.

124. As a result of Defendants' impermissible conduct, Plaintiff JEFFERSON MEIGHAN demands judgment against Defendants in a sum of money to be determined at trial.

SIXTH CLAIM FOR RELIEF
STATE LAW – NEGLIGENT HIRING AND RETENTION AGAINST DEFENDANT CITY OF NEW YORK

125. Plaintiff JEFFERSON MEIGHAN repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

126. Upon information and belief, Defendant CITY OF NEW YORK failed to use reasonable care in the hiring and retention of the Defendant "John Doe" POLICE OFFICERS who conducted and participated in the acts of subjecting Plaintiff JEFFERSON MEIGHAN to battery and excessive force in the manner described herein.

127. Defendant CITY OF NEW YORK knew, or should have known in the exercise of reasonable care, the propensities of the aforesaid Defendant "John Doe" POLICE OFFICERS to engage in the wrongful conduct heretofore alleged in this complaint.

128. As a result of the foregoing conduct, Plaintiff JEFFERSON MEIGHAN was caused to suffer personal injuries, emotional distress, anguish, anxiety, fear, humiliation, and other irreparable damage to his life.

129. As a result of Defendants' impermissible conduct, Plaintiff JEFFERSON MEIGHAN demands judgment against Defendants in a sum of money to be determined at trial.

SEVENTH CLAIM FOR RELIEF
STATE LAW – NEGLIGENT TRAINING AND SUPERVISION AGAINST DEFENDANT CITY OF NEW YORK

130. Plaintiff JEFFERSON MEIGHAN repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

131. Upon information and belief, Defendant CITY OF NEW YORK failed to use reasonable care in the training and supervision of the aforesaid Defendant "John Doe" POLICE OFFICERS who conducted and participated in the battery and use of excessive force against Plaintiff JEFFERSON MEIGHAN.

132. Defendant CITY OF NEW YORK knew, or should have known that the requirements, guidelines, and terms of its training for Defendant "John Doe" POLICE OFFICERS were insufficient and inadequate to prevent the Defendant "John Doe" POLICE OFFICERS from engaging the wrongful conduct heretofore alleged in this complaint.

133. As a result of the foregoing conduct, Plaintiff JEFFERSON MEIGHAN was caused to suffer personal injuries, emotional distress, anguish, anxiety, fear, humiliation, and other irreparable damage to his life.

134. As a result of Defendants' impermissible conduct, Plaintiff JEFFERSON MEIGHAN demands judgment against Defendants in a sum of money to be determined at trial.

EIGHTH CLAIM FOR RELIEF
STATE LAW - GENERAL NEGLIGENCE
AGAINST THE DEFENDANT "JOHN DOE" POLICE OFFICERS

135. Plaintiff JEFFERSON MEIGHAN repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

136. The Defendant "John Doe" POLICE OFFICERS owed Plaintiff JEFFERSON MEIGHAN and all citizens of Defendant CITY OF NEW YORK a duty of "courtesy, professionalism, and respect," as stated on the sides of marked NYPD police vehicles.

137. The Defendant "John Doe" POLICE OFFICERS owed Plaintiff JEFFERSON MEIGHAN a duty of care not to subject him to battery and excessive force.

138. Defendant "John Doe I" POLICE OFFICER breached this duty by shoving Plaintiff JEFFERSON MEIGHAN off of the aforementioned ledge, thereby causing him to injure his right wrist.

139. Defendant "John Doe II" POLICE OFFICER and Defendant "John Doe III" POLICE OFFICER breached this duty by shoving Plaintiff JEFFERSON MEIGHAN multiple times as he was leaving Zuccotti Park.

140. Defendant "John Doe I" POLICE OFFICERS should have foreseen that shoving Plaintiff JEFFERSON MEIGHAN' off of a three foot ledge would cause Plaintiff JEFFERSON MEIGHAN to suffer a significant and painful injury.

141. Defendant "John Doe II" POLICE OFFICER and Defendant "John Doe III" POLICE OFFICER should have foreseen that shoving Plaintiff JEFFERSON MEIGHAN multiple times would generally cause him to suffer a significant and painful injury and specifically cause him to suffer an exacerbation of the injury to his right wrist that he had suffered moments earlier.

142. Further, the Defendant "John Doe" POLICE OFFICERS owed a duty to Plaintiff JEFFERSON MEIGHAN to assist him after placing him in peril with the above-described acts.

143. The Defendant "John Doe" POLICE OFFICERS' breach of their duty to assist Plaintiff JEFFERSON MEIGHAN exacerbated his physical injuries and caused him additional mental and emotional injuries.

144. The Defendant "John Doe" POLICE OFFICERS' breaches of their duties owed to Plaintiff JEFFERSON MEIGHAN were the direct and proximate cause of Plaintiff JEFFERSON MEIGHAN's physical as well as mental and emotional injuries.

145. Plaintiff JEFFERSON MEIGHAN received both actual and substantial physical as well as mental and emotional injuries as a result of the Defendant "John Doe" POLICE OFFICERS' breaches of their duty owed to him.

146. As a result of the Defendants' conduct, Plaintiff JEFFERSON MEIGHAN was caused to suffer personal injuries, emotional distress, anguish, anxiety, fear, humiliation, loss of freedom, and damage to his reputation and standing within his community.

147. As a result of the Defendant "John Doe" POLICE OFFICERS' negligent conduct, Plaintiff JEFFERSON MEIGHAN demands judgment against Defendants in a sum of money to be determined at trial.

NINTH CLAIM FOR RELIEF
STATE LAW - GENERAL NEGLIGENCE
AGAINST DEFENDANT CITY OF NEW YORK

148. Plaintiff JEFFERSON MEIGHAN repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

149. The Defendant CITY OF NEW YORK owed a duty to Plaintiff JEFFERSON MEIGHAN to prevent him from being subjected to battery and excessive force by the Defendant "John Doe" POLICE OFFICERS.

150. The Defendant CITY OF NEW YORK breached this duty by allowing Plaintiff JEFFERSON MEIGHAN to sustain physical, mental, and emotional injuries as a result of being shoved off of a two to three foot ledge by Defendant "John Doe I" POLICE OFFICER and thereafter being shoved multiple times by Defendant "John Doe II" and Defendant "John Doe III" POLICE OFFICER.

151. The Defendant CITY OF NEW YORK should have foreseen that allowing the Defendant "John Doe" POLICE OFFICERS to become and remain officers of the NYPD would cause them to subject individuals generally and Plaintiff JEFFERSON MEIGHAN specifically to battery and excessive force.

152. The Defendant CITY OF NEW YORK's breach of its duty owed to Plaintiff JEFFERSON MEIGHAN was the direct and proximate cause of Plaintiff JEFFERSON MEIGHAN's physical as well as mental and emotional injuries.

153. Plaintiff JEFFERSON MEIGHAN received both actual and substantial physical as well as mental and emotional injuries as a result of the Defendant CITY OF NEW YORK's breach of its duty owed to him.

154. The Defendant CITY OF NEW YORK is further liable upon the theory of *Respondeat Superior* in that the Defendant "John Doe" POLICE OFFICERS at all times were working both within the scope and in furtherance of their employment by Defendant CITY OF NEW YORK when Plaintiff JEFFERSON MEIGHAN was caused to suffer the physical as well as mental and emotional injuries as described herein.

155. As a result of the Defendant's impermissible conduct, Plaintiff JEFFERSON MEIGHAN was caused to suffer personal injuries, emotional distress, anguish, anxiety, fear, humiliation, and other irreparable damages to his life.

156. As a result of the Defendant's impermissible conduct, Plaintiff JEFFERSON MEIGHAN demands judgment against Defendant CITY OF NEW YORK in a sum of money to be determined at trial.

TENTH CLAIM FOR RELIEF
STATE LAW – BATTERY
AGAINST THE DEFENDANT "JOHN DOE" POLICE OFFICERS

157. Plaintiff JEFFERSON MEIGHAN repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

158. Defendant "John Doe I" POLICE OFFICER committed battery upon Plaintiff JEFFERSON MEIGHAN in his act of making bodily contact with Plaintiff JEFFERSON MEIGHAN by shoving him off of the aforementioned ledge and thereby causing him to suffer an injury to his right wrist.

159. Defendant "John Doe II" POLICE OFFICER and Defendant "John Doe III" POLICE OFFICER committed battery upon Plaintiff JEFFERSON MEIGHAN in their act of making bodily contact with Plaintiff JEFFERSON MEIGHAN by shoving him multiple times.

160. The Defendant "John Doe" POLICE OFFICERS' performed these acts of making bodily contact with Plaintiff JEFFERSON MEIGHAN with the intent to do so.

161. The Defendant "John Doe" POLICE OFFICERS' acts of making bodily contact with Plaintiff JEFFERSON MEIGHAN were offensive in nature to Plaintiff JEFFERSON MEIGHAN.

162. The Defendant "John Doe" POLICE OFFICERS' acts of making bodily contact with Plaintiff JEFFERSON MEIGHAN would be objectively offensive in nature to a reasonable person aware of the circumstances of the incident in question.

163. The Defendant "John Doe" POLICE OFFICERS performed their acts of making bodily contact with Plaintiff JEFFERSON MEIGHAN without consent from Plaintiff JEFFERSON MEIGHAN.

164. The Defendant "John Doe" POLICE OFFICERS' acts of making bodily contact with Plaintiff JEFFERSON MEIGHAN were not otherwise privileged.

165. As a result of the Defendants' non-consensual and unprivileged physical contact, Plaintiff JEFFERSON MEIGHAN was caused to suffer physical as well as mental and emotional injuries, negligent and intentional infliction of emotional distress, anguish, anxiety, fear, and humiliation.

166. As a result of the foregoing, Plaintiff JEFFERSON MEIGHAN is entitled to compensatory damages and punitive damages against Defendants in an amount to be determined at trial.

WHEREFORE and in light of the foregoing, it is respectfully requested that the Court assume jurisdiction and:

[a] Invoke pendent party and pendent claim jurisdiction.

[b] Award appropriate compensatory and punitive damages.

[c] Award appropriate declaratory and injunctive relief.

[d] Empanel a jury.

[e] Award attorney's fees and costs.

[f] Award such other and further relief as the Court deems to be in the interest of justice.

DATED: New York, New York
October 24, 2012

Respectfully submitted,

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APPENDIX: ADDITIONAL FACT PLEADINGS IN SUPPORT OF MONELL CLAIMS

THE PRACTICE AND CUSTOM OF THE NEW YORK CITY POLICE DEPARTMENT OF PERMITTING ITS OFFICERS TO UTILIZE EXCESSIVE FORCE IN RESPONSE TO AND DURING OCCUPY WALL STREET ASSEMBLIES, MARCHES, AND EVENTS

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1. Upon information and belief, Defendant CITY OF NEW YORK tacitly condones its police officers' continuing and widespread practice of undertaking extraordinary and unjustified uses of force against persons engaged in the practice of exercising their First Amendment Protected rights to free speech and association.

2. Upon information and belief, Defendant CITY OF NEW YORK tacitly condones its police officers' continuing and widespread practice of undertaking extraordinary and unjustified uses of force against person specifically engaged in the practice of exercising their First Amendment Protected rights to free speech and association while participating in or observing assemblies, marches, and events related to Occupy Wall Street.

3. In January 2012, the concentrated and collaborative efforts of seven law school clinics throughout the United States founded the *Protests and Assembly Rights Project* in order to "Investigate… the United States' response to Occupy Wall Street in light of the government's international legal obligations."[4]

4. These same concentrated and collaborative efforts helped the *Protests and Assembly Rights Project* draft and thereafter, in July of 2012, publish, "Suppressing Protest: Human Rights Violations In The U.S. Response To Occupy Wall Street" ("The Report"); wherein, the authors state, "In many instances, the… [NYPD] have responded aggressively to nonviolent protests, and have escalated situations —– through arbitrary or misapplications of the law, an excessive police presence, or the use of unwarranted force. The police response has thus . . . undermined basic assembly and expression freedoms [and] [a]t times . . . presented a threat to the safety of New Yorkers." See fn4 at [internal pagination] 71.

5. In efforts to explain and/or identify the source of the NYPD's "aggressive responses to nonviolent protests", The Report calls attention to the fact that, "in recent years, New York City has witnessed a shift from 'reactive' policing to 'proactive' policing under Commissioner Raymond Kelly's 'Safe Streets, Safe City' initiative…. [meaning] that police adopt measures in advance to minimize the potential impact and size of a protest, which might include preparing a large police force to arrive at a scheduled protest location before the event begins, or regulating permits for the protest in a manner designed to redirect the protest." See fn4 at [internal pagination] 30 (internal citations omitted).

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[4] Sarah Knuckley et al., "Suppressing Protest: Human Rights Violations in the U.S. Response to Occupy Wall Street" (2012). Report incorporated by reference herein and available online at: http://www.chrgj.org/projects/suppressingprotest.pdf

6. Despite the positive implications in the title of Commissioner Kelly's 'Safe Streets, Safe City' initiative, this 'proactive' form of policing has failed to keep OWS protesters, observers, and bystanders alike safer, but instead, has led to repeated and continuing acts of police officers committing "clear violations of the government's obligation to uphold assembly and expression rights…. [amounting together to] protest suppression[.]" See fn4 at [internal pagination] 71.

7. Further, The Report cites several instances of "Overpolicing and Poor Communication" conducted by the NYPD, where generally "[a]t times, the number of officers on hand [at OWS assemblies, marches, and events] has rivaled or even exceeded the number of protestors . . . repeatedly, the number of visible police [has been] manifestly excessive in comparison to both the peaceful nature of the assembly and the number in attendance at the protests." to wit; "[o]casionally, officers in visibly threatening "hard" uniform (e.g.. body padding, helmets, shields) have attended protests, including small protests posing no evident threat." See fn4 at 82.

8. Witnesses have observed NYPD officers who have been assigned to perform crowd control duties and overall help provide for individuals' safety instead strike, beat, and otherwise berate civilians without reason, without notice, and without consequence; to wit, "One protestor . . . reported being punched in the left temple by an officer, without any apparent provocation or notice [and thereafter] [t]he punch led to swelling, bleeding, bruising, dizzy spells, and nausea [which required] the individual [to seek] emergency medical treatment[,]" further, "[one legal observer who was also a retired New York Supreme Court judge] . . . witnessed an officer throw a woman to the ground 'out of nowhere' and hit her in the head[,]" and still further, "[one video from an OWS event] shows that an officer approached a woman from behind and grabbed her by the strap of her backpack and her scarf for no apparent reason[;] the officer [then] began to pull the woman towards him . . . for approximately fifteen seconds, and appeared to possibly be choking her via the strap of her scarf [and after this incident] the police appeared not to take any action [against the officer]." See fn4 at 73, 74, and "Appendix I[:] Table of Alleged Police Use of Force Incidents."

9. More specific incidents of excessive force by NYPD officers near the time of the Defendant "John Doe" POLICE OFFICERS' acts of shoving and causing Plaintiff JEFFERSON MEIGHAN to injure his right wrist appear in The Report; wherein the authors state, "A significant number of incidents were reported on March 17-18"; to wit, "despite the fact that] there [have been] no reports or indications of any imminent or ongoing criminal activity or danger to public safety posed by the [March 17th] assembly," . . . "[o]ne journalist described the night as *'the most violent police response'* he had seen at an Occupy Protest" and included incidents of NYPD officers' use of excessive force including though not limited to, "punch[ing] a woman in the side of her head, and repeatedly shov[ing] protestors from behind[,]" further "[an officer responding to a protester who was approaching him in order to greet him by] shov[ing] him twice hard in the chest[,]" and still further, "after [the officers' order to disperse that evening officers were seen] slam[ming] an Occupy [volunteer] [para]medic's head into a glass door, [with such force that the glass was smashed]." See fn4 at 74, and 75. (emphasis added).

10. The Report posits how, following incidents of police brutality such as these, the conduct of the NYPD in response to OWS assemblies, marches, and events has and continues to cause "[p]rotestors [to] reasonably perceive that they cannot safely protest [and thus remain] constantly on guard for potential arbitrary police force, or decide to leave the assembly[,]"; and as a result OWS participants, observers, and bystanders and civilians generally "view a[n] NYPD officer as someone who can take out [his] baton and beat [an individual] and face no repercussion." See fn4 at 81.

11. Or further, stated differently by a graduate student who had attended multiple OWS events before and leading up to The Report's publication, "'It's a shock when you expect police to protect you, but you see them beat people . . . [I] grew up thinking that the cops are 'the good guys' but . . . when you see them beat people for no reason, it changes your world. You don't feel safe." See fn3 at 82.

12. Plaintiff JEFFERSON MEIGHAN did not feel safe on the evening of the March 17th, 2012.

13. In suggesting positive changes that the NYPD should employ to effectively curb and prevent its officers from engaging in repeated, continuing and widespread acts of excessive force in response to OWS assemblies, marches, and events specifically and individuals' exercising of their First Amendment protected rights generally, The Report states, "[Government agencies] have an international legal obligation to investigate, prosecute, and remedy human rights violations[;] [t]his obligation requires [government agencies] to have in place systems that enable individuals to have 'accessible and effective remedies' to vindicate their rights . . . [t]he obligation to investigate and punish violations 'requires that not only the direct perpetrators of human rights violations be punished.'" See fn4 at 68.

14. Upon information and belief, Defendant CITY OF NEW YORK has been, and continues to be, aware of the prevalence of the problem of officers of the New York City Police Department engaging in excessive force in order to effectively chill OWS participants', observers', and bystanders' specific as well as individuals' general exercise of their First Amendment protected rights to free speech, expression, and association, but has failed to take action to remedy the problem.

15. Upon information and belief, Defendant CITY OF NEW YORK continues to resist collection and disclosure of data concerning the prevalence of police brutality utilized in order to effectively chill civilians' exercise of their First Amendment protected rights, instead choosing to conceal the problem from the public in order to continue its policy of acquiescence in such practices without fear of public or political backlash.

16. Upon information and belief, Defendant CITY OF NEW YORK continues to condone or otherwise permit shortcomings and deficiencies in the New York City Police Departments' recruitment, training, and management practices that allow the continuation of the practice and custom of NYPD officers' use of excessive force and police brutality in order to effectively chill civilians' exercise of their First Amendment protected rights.

17. Upon information and belief, Defendant CITY OF NEW YORK continues to condone or otherwise permit flawed and/or deficient systems of reporting, oversight, and accountability that allow the continuation of the practice and custom of NYPD officers' use of excessive force and police brutality in order to effectively chill civilians' exercise of their First Amendment protected rights.

18. Defendant CITY OF NEW YORK's knowledge and condonation of the continuing customs and practices that caused Plaintiff's injury precede the inception of the OWS movement, and have been repeated and clear for nearly twenty (20) years.

19. On July 7, 1994, a blue ribbon panel led by Hon. J. Milton Mollen ("The Mollen Commission") presented the report of its nearly two-year investigation into allegations of NYPD corruption, undertaken in 1992 at the behest of then-Mayor David Dinkins ("The Mollen Commission Report," "The Report").[5]

20. The Mollen Commission Report was subtitled "ANATOMY OF FAILURE: A PATH FOR SUCCESS." The Report at page before "i."

21. The July 7, 1994 Mollen Commission Report was prepared for and at the request of the Defendant City of New York, and therefore knowledge of its contents may be imputed to Defendant City of New York.

22. The Mollen Commission Report found that police officers commonly covered up their fellow officers' misconduct, including but not limited to excessive applications of force against civilians, in accordance with a custom or practice known as a "code of silence" or "Blue Wall of Silence.

23. The above-referred custom or practice of members of the New York City Police Department known as the "Blue Wall of Silence" was discussed at length on pages 53-59 of the July 7, 1994 Mollen Commission Report.

24. One police officer who testified before the Mollen Commission explained that the code of silence "…starts in the Police Academy, and it just develops from there…. It starts with the instructors telling you never to be a rat, never give up your fellow officer. It starts with other recruits telling you they'll never give you up, and it just goes down the line as you go… into a precinct." The Report at 55.

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[5] Mollen, Baer, Evans, Lankler, Tyler, Armao, Cornfeld, "The City of New York Commission to Investigate Allegations of Police Corruption and The Anti-Corruption Procedures of The Police Department Commission Report," July 7, 1994, City of New York. Incorporated by reference herein and available online at http://www.parc.info/client_files/Special%20Reports/4%20-%20Mollen%20Commission%20-%20NYPD.pdf.

25. Another officer who testified before the Mollen Commission stated that "[c]ops don't tell on cops. And if they did tell on them, just say if a cop decided to tell on me, his career's ruined. He's going to be labeled as a rat…. he's going to have nobody to work with. And chances are if it comes down to it… [the whistleblower's fellow officers are] going to let him get hurt." The Report at 53-54.

26. A third officer who testified before the Mollen Commission concurred, stating: "[i]f you're labeled a rat… you're going to have a difficult time for the remainder of your career…. [i]t was something that you couldn't shake." Id. at 54.

27. An NYPD lieutenant who testified before the Mollen Commission confirmed that officers are at times "ostracized" for breaking the code of silence. Id.

28. An NYPD captain who disciplined his subordinates for misconduct and reported allegations of corruption to NYPD Internal Affairs explained to the Mollen Commission that he had been transferred to thirty-eight (38) different commands in the course of his career, and in almost every case "he found evidence that his reputation had preceded him. At one command, his locker was burned; at another, his car tires were slashed; at another, he received threats of physical harm." Id.

29. The *Mollen Commission Report* explicitly identified police brutality, including "implicit or explicit threat[s] of physical harm[,]" and official tolerance thereof, as critical issues that must be investigated by "any Commission investigating police corruption." Id. at 44.

30. The *Mollen Commission* went on to fault the NYPD's intelligence gathering regarding incidents of brutality as "wholly inadequate." Id. at 45.

31. The *Mollen Commission* found that "[police b]rutality is… used as a rite of initiation to prove that an officer is a tough or 'good' cop, one who can be accepted and trusted by his fellow officers not to report wrongdoing." Id. at 47.

32. One officer who testified before the Mollen Commission noted that brutality "is a form of acceptance. It's not simply giving a beating. It's the other officers begin [sic] to accept you more." Id.

33. The Mollen Commission also found that NYPD "supervisors sometimes turn a blind eye to evidence of unnecessary violence…. [b]ecause a complaint usually comes down to an officer's word (and often the word of fellow officer witnesses) against the… [complainant's] word, it is easy for a supervisor to let clear acts of brutality slide by without recourse." The Report at 49.

34. As of the July 7, 1994 *Mollen Commission Report,* Defendant City of New York had notice that the officers and commanders of the New York City Police Department tolerated and encouraged police to lie to cover up the wrongful conduct of themselves and their fellow officers, including brutal conduct like that which was perpetrated by Defendant "John Doe" POLICE OFFICERS upon Plaintiffs.

35. On information and belief, Defendant CITY OF NEW YORK did not take meaningful steps to eliminate the custom or practice of officers employing excessive force against civilians.

36. On information and belief, Defendant CITY OF NEW YORK did not take meaningful steps to eliminate the enabling custom or practice of officers actively or passively covering up other officers' misconduct, including but not limited to employing excessive force against civilians.

37. The failure of Defendant CITY OF NEW YORK to meaningfully address these issues was underscored when the non-governmental organization Human Rights Watch conducted a study examining common obstacles to accountability for police abuse in fourteen large cities, including Atlanta, Boston, Chicago, Detroit, Indianapolis, Los Angeles, Minneapolis, New Orleans, New York, Philadelphia, Portland, Providence, San Francisco, and Washington, D.C.[6]

38. Research for this report was conducted over two and a half years, from late 1995 through early 1998. See fn6.

39. The report stated: "The barriers to accountability are remarkably similar from city to city. Shortcomings in recruitment, training, and management are common to all. So is the fact that officers who repeatedly commit human rights violations tend to be a small minority who taint entire police departments but are protected, routinely, by the silence of their fellow officers and by flawed systems of reporting, oversight, and accountability. Another pervasive shortcoming is the scarcity of meaningful information about trends in abuse; data are also lacking regarding the police departments' response to those incidents and their plans or actions to prevent brutality. Where data do exist, there is no evidence that police administrators or, where relevant, prosecutors, utilize available information in a way to deter abuse." See Id.

40. The report documented that the official response of the New York City Police Department and the City of New York, to credible, persistent reports of abuse was to deny the existence of the problem. See Id.

41. The report documented that the New York City Police Department, and the City of New York failed to discipline officers in all but 1% of incidents in which complaints were filed with the Civilian Complaint Review Board. See Id.

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[6] "Shielded from Justice: Police Brutality and Accountability in the United States," Human Rights Watch, June 1998. Report incorporated by reference herein and available online at http://www.columbia.edu/itc/journalism/cases/katrina/Human%20Rights%20Watch/uspohtml/toc.htm.

42. Upon information and belief, the report was presented to Mayor Rudy Giuliani of the City of New York.

43. Upon information and belief, the Mayor denounced the report without reading it.

44. Upon information and belief, Kenneth Roth, then Executive Director Human Rights Watch wrote in an open letter to the Mayor on July 14, 1998: "Rather than engage in a serious discussion of the problem of police brutality in New York City, you attacked those who raised the issue -- apparently without even reading the advance copy of the report we had sent you."

45. Upon information and belief, Defendant CITY OF NEW YORK has been, and continues to be, aware of the prevalence of the problem of officers of the New York City Police Department engaging in excessive force, but has failed to take action to remedy the problem.

46. That the Defendant City of New York continued to have notice after 1994 that the officers and commanders of the New York City Police Department continued to tolerate and encourage police to lie to cover up the wrongful conduct of themselves and their fellow officers after the publication of the Mollen Commission Report can be shown with reference to the following cases:

a. **Ariza v. City of New York**, 1996 U.S. Dist. LEXIS 20250, 14 (E.D.N.Y. March 7, 1996) ["The [municipal] defendants concede, however, that the code exists to prevent other officers from reporting corruption or dishonesty by fellow officers…. [t]he principle behind the 'blue wall of silence' is that officers will suffer recrimination for breaking ranks and subjecting police conduct to public scrutiny."]

b. **White-Ruiz v. City of New York**, 1996 U.S. Dist. LEXIS 15571, 23 (S.D.N.Y. October 21, 1996) ["[P]laintiff offers sufficient evidence to permit a reasonable trier of fact to infer that the 'blue wall of silence' constitutes a custom or usage of the Department"]

c. **United States v. Rosario**, 237 F. Supp. 2d 242, 248 (E.D.N.Y. 2002) ["[Assistant U.S. Attorney] Palmer testified that while supervising the federal investigation into the Louima assault, she routinely confronted a 'blue wall of silence' erected by police officers and PBA officials intent on obstructing efforts to uncover the full truth about what had happened at the 70th precinct on August 9, 1997."]

d. **Barry v. New York City Police Dep't**, 2004 U.S. Dist. LEXIS 5951, 40-41 (S.D.N.Y. April 7, 2004) ["[P]laintiff's witnesses speak from firsthand experience about the blue wall of silence…. Plaintiff complains of acts that are of the precise nature as the customs and practices described in the [Mollen Commission] Report."

e. **Griffin v. City of New York et al.**, 10-CV-01824 (E.D.N.Y. 2010) [Plaintiff detective sues on pattern of retaliation following his reporting fellow detective to Internal Affairs, fellow officers cover for detective accused of misconduct, see, e.g., at ¶35: "Internal Affairs conducted its investigation into [Detective] Plaintiff's allegations [of misconduct] against [Detective] McCarthy. All of the material witnesses failed to cooperate with the investigation by being less than truthful…. [a]s a result, the allegations made by Plaintiff against McCarthy were dismissed as unsubstantiated."]

47. Upon information and belief, the above-referred constitutionally violative policies, practices and customs remain widespread, open, and notorious throughout the NYPD to date.

48. Upon information and belief, the policymakers of the NYPD and Defendant City of New York are aware that these practices and customs of NYPD officers continue to date, and have failed to take adequate steps to curb these practices and customs, which regularly cause the violation of citizens Constitutional rights.

49. Defendant City of New York has failed to meaningfully curb these Constitutionally-violative customs and practices to date.

50. In the introduction to the Mollen Commission Report, it is noted that "the [Internal Affairs] system designed to protect the [New York City Police] Department from corruption minimized the likelihood of uncovering it." The Report at 3.

51. The Mollen Commission Report explained that at that time, the Internal Affairs Division (re-named the Internal Affairs Bureau in a 1993 restructuring) attempted "to close cases with as little effort as possible…. One officer told us they sit around and 'eat donuts and do crossword puzzles' -- and the supervisors and commanders did little more…. an anonymous survey of the work conditions and attitudes of IAD investigators… revealed that almost half of IAD investigators' time was spent on non-investigatory matters -- and more of their 'investigative' work was done without ever leaving their office…. The facts confirmed IAD's do-nothing reputation." The Report at 85

52. Since the Mollen Commission Report was published in 1994, the number of complaints of police corruption and other misconduct logged annually by NYPD Internal Affairs has nearly quadrupled, rising from 14,789 logs received in 1994 to 44,994 logs received in 2006, the last year for which NYPD reporting is available. *NYPD Internal Affairs 2006 Annual Report*, 12-13.[7]

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[7] 1993-2006 Internal Affairs Reports available online at http://www.nyclu.org/news/nyclu-releases-16-years-of-nypd-corruption-reports.

53. Over that same time period, the number of corruption and other police misconduct complaints investigated annually by NYPD Internal Affairs has fallen by more than half, from 2,258 investigations in 1994 to 1057 investigations in 2006. *Id*.

54. More up-to-date information relating to these customs, policies, usages, practices, procedures, and rules of the City of New York and the New York City Police Department is available in "THE PRICE OF BRUTALITY: A special report.; Police Complaints Settled, Rarely Resolved." *The New York Times*, September 17, 1997.[8]

55. Upon information and belief, the steady decline in investigations by NYPD Internal Affairs since the publication of the Mollen Commission Report is representative of a return to a "business-as-usual" mentality with respect to police corruption and brutality within the NYPD.

56. Defendant City of New York has had notice through the annual NYPD Internal Affairs reports that NYPD Internal Affairs is not effectively fulfilling its mandate of policing NYPD corruption and brutality generally.

57. Upon information and belief, Defendant City of New York has had notice through the annual NYPD Internal Affairs reports that NYPD Internal Affairs is not effectively curbing the established and widespread customs and practices of NYPD officers employing brutality with impunity and covering for one another's misconduct.

58. Defendant City of New York has also had notice that the New York City Civilian Complaint Review Board ("CCRB") has not been effective in curbing the above-referred practices of NYPD officers employing brutality with impunity and covering for one another's misconduct.

59. This is not a new phenomenon; in Sango v. New York, 1989 U.S. Dist. LEXIS 18214, 40-41 (S.D.N.Y. June 19, 1989), the court found that CCRB investigations into police misconduct were so grossly inadequate that "their predictable results could have led… officers to believe that their conduct, no matter how improper, would go unpunished."

60. That Defendant City of New York had knowledge of its continuing failure to abate the above-referred practices and customs can be shown with reference to the following facts reported to the City in the *2006 Annual Report* of the CCRB:[9]

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[8] Sontag, Deborah & Barry, Dan, *The New York Times*, Sept. 17, 1997 available online at http://www.nytimes.com/1997/09/17/.../price-brutality-special-report-police-complaints-settled-rarely-resolved.hmtl.

[9] 2001-2010 CCRB Reports available online at http://www.nyc.gov/html/ccrb/html/reports.html.

a. Only 12,059 of the 29,446 cases of alleged police misconduct closed by the CCRB between 2002 and 2006 received full investigations. *CCRB 2006 Annual Report*, 93.
b. Only 1,441 of the 29,446 cases of alleged police misconduct closed by the CCRB between 2002 and 2006 resulted in a finding of even one substantiated allegation. *Id.*
c. The NYPD either took no disciplinary action whatsoever or merely issued instructions in 1,062 of the 1,918 cases of CCRB-substantiated police misconduct closed by the department between 2002 and 2006. Some of these cases had been forwarded to the NYPD by the CCRB before 2002. *Id.* at 101.
d. In the five years between 2002 and 2006 only one (1) NYPD officer was subject to employment termination as a result of allegations of misconduct substantiated by the CCRB. *Id.* at 100.
e. The CCRB substantiated only 3.5% of the excessive force allegations reported between 2002 and 2006. *Id.* at 95.

61. The New York Civil Liberties Union report on the CCRB's activities between 1994 and 2006, entitled "Mission Failure: Civilian Review of Policing in New York City 1994-2006" ("NYCLU Report")[10] reviewed, collated and summarized information from the CCRB's Annual Reports and other sources, resulting in the following findings:

a. CCRB complaint data indicates that serious police misconduct, including improper threats and use of force, occurs with significant frequency, with allegations of excessive force in half of all complaints filed with the CCRB. NYCLU Report at 4.
b. The NYPD takes no disciplinary action whatsoever against nearly 30% of officers named in substantiated CCRB complaints, and gave only "instructions" to nearly a third of officers who were disciplined following substantiated CCRB complaints between 2000 and 2005. Id. at 5.
c. "In recent years it appears that the NYPD has adopted a radically more lenient disciplinary standard as regards acts of police misconduct directed at civilians. In 2004 the police department ordered instructions in approximately 30 percent of all disciplinary actions related to a substantiated CCRB complaint. In 2005 instructions represented nearly 60 percent of such disciplinary actions; and in 2006 instructions rose to 72 percent of all disciplinary actions related to police misconduct directed at civilians. Suspension of a police officer has become an extraordinarily rare occurrence, even when egregious acts of misconduct are involved." Id. at 6.

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[10] Available online at http://www.nyclu.org/files/ccrb_failing_report_090507.pdf.

62. In all, the cases, studies, and reports cited in the paragraphs above demonstrate that the customs and practices of NYPD officers covering for and otherwise condoning or abetting the unlawful, wrongful and/or unconstitutional actions of their fellow police officers continued after the Mollen Commission Report to the present day.

63. In all, the cases, studies, and reports cited in the paragraphs above demonstrate that the Defendant City of New York knew or should have known that the customs and practices of NYPD officers covering for and otherwise condoning or abetting the unlawful, wrongful and/or unconstitutional actions of their fellow police officers continued after the Mollen Commission Report to the present day.

64. The policy of failure to screen, discipline, supervise, counsel, transfer, control, and correct unconstitutional patterns or conditions, is evidenced, *inter alia*, by the cases and reports cited above.

65. Upon information and belief, Defendant, CITY OF NEW YORK, and the New York City Police Department failed to effectively screen, train, supervise and discipline its police officers, including, but not limited to, Defendant "John Doe" POLICE OFFICERS, as demonstrated by their propensity for group violence, including excessive use of force and restraint, and for their failure to protect citizens from unconstitutional conduct of other police officers.

66. Upon information and belief, Defendant CITY OF NEW YORK, failed to put into place and otherwise maintained an inadequate structure for risk containment and stress management relative to its police officers. *Inter alia*, the structure was deficient at the time of pre-selection and selection to evaluation and exchange within the command structure about the performance of individual police officers; to the training of supervisory personnel to effectively and adequately evaluate performance of an officer; and to otherwise put the command structure on notice that an individual was at significant levels of risk to the public at large or to specific segments thereof.

67. The net effect of these deficiencies and failures was to permit police officers of the New York City Police Department to function at levels of significant and substantial risk to the public.

68. Upon information and belief, Defendant CITY OF NEW YORK continues to resist collection and disclosure of data concerning the prevalence of police brutality, choosing to conceal the problem from the public in order to continue its policy of acquiescence in such practices without fear of public or political backlash.

69. Upon information and belief, Defendant CITY OF NEW YORK continues to condone or otherwise permit shortcomings and deficiencies in the New York City Police Departments' recruitment, training, and management practices that allow the practice and custom of the use of excessive force and police brutality by the police officers of the New York City Police Department to continue.

70. Upon information and belief, Defendant CITY OF NEW YORK continues to condone or otherwise permit flawed and/or deficient systems of reporting, oversight, and accountability that allow the practice and custom of the use of excessive force and police brutality by the police officers of the New York City Police Department to continue.

DATED: New York, New York
October 24, 2012

Respectfully submitted,

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